November 21, 1989

E R R A T A

Re: Unemployment Insurance Appeals Board
Precedent Benefit Decision No. P-B-466

Claimant: Juanelle Huddleston

The above decision is corrected by changing the date "November 26, 1988" in line 10 of the Statement of Facts, to "November 19, 1988".

014-06058

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

JUANELLE HUDDLESTON
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-466
Case No. 89-04000

S.S.A. No.

EMPLOYMENT DEVELOPMENT DEPARTMENT

Office of Appeals No. ING-TE-06098

The Employment Development Department appealed from the decision of the administrative law judge which held that the claimant was not ineligible for extended training benefits under section 1271(a) of the Unemployment Insurance Code.

STATEMENT OF FACTS

The claimant established a valid claim for unemployment insurance benefits effective June 5, 1988. She did not receive benefits during her "waiting week" ending June 11, 1988. She then received benefits for thirteen consecutive weeks, the thirteenth of these being the week ending September 10, 1988. The claimant was employed and received no benefits the next seven-week period ending October 29, 1988. She filed for and was paid benefits the week ending November 5, 1988 and was working and paid no benefits for the two weeks ending November 26, 1988. The claimant again reopened her claim and was paid benefits for at least sixteen weeks beginning the week ending November 26, 1988 through March 11, 1989.

At the time the claimant initially applied for unemployment insurance benefits in June 1988, she was given a pamphlet by the Department which generally described the California Training Benefits Program (CTB). The pamphlet stated that in order to be eligible for training extension benefits (TE), an individual must apply and be approved for training by the sixteenth week of "the current unemployment period". The Department's pamphlet has since been revised and presently states:

> "To qualify for training extension benefits, you must apply for CTB before you have received the sixteenth week of benefits, including the waiting period, on a regular unemployment insurance claim. If you apply after receiving sixteen weeks of unemployment insurance benefits, you may be eligible for CTB but not for a training extension (TE) claim."

The claimant remembered receiving the pamphlet when she initially applied for unemployment insurance benefits, but stated that she never read it. The Department stated that in the period during which the claimant was intermittently in receipt of benefits, it had verbally advised her of the existence of training programs which might be appropriate for an individual in the claimant's circumstances. On February 22, 1989 the claimant applied for CTB and submitted a TE claim.

The administrative law judge found that the claimant had good cause for not filing within sixteen weeks of her initial claim in June 1988 and was, accordingly, eligible for TE under the CTB program. The administrative law judge states that the claimant would not have applied for TE before September 1988 because she had not been unemployed for sixteen weeks at that time. She would not have applied for TE for the next seven weeks as she was working and not receiving unemployment insurance. She did not thereafter apply for a period of time because she was looking for work. The claimant could have assumed, if she had read the pamphlet that the Department issued to her, that the sixteen-week period began to run as of the last time she became unemployed, that is, as of November 27, 1988.

The Department takes the position that the sixteen-week deadline for applying for TE begins to run as of the effective date of the initial claim, and continues for the sixteen consecutive calendar weeks.

REASONS FOR DECISION

Section 1266 of the code provides:

> "Experience has shown that the ability of a large number of the population of California to compete for jobs in the labor market is impaired by advancement in technological improvements, the widespread effects of automation and relocation in our economy, and foreign competition as set forth

> in petitions certified under the federal Trade Act of 1974, as amended (Title 19, United States Code, Sections 2101 et seq.). The Legislature finds that many individuals in California are lacking in skills which would make them competitive in the labor market. They are in need of training or retraining in skills required in demand occupations. It is the policy of this state to assist these individuals by providing unemployment compensation benefits, extended duration benefits, and other federally funded unemployment compensation benefits, including those available under the federal Trade Act of 1974 (P.L. 93-618), as amended, during a period of retraining to qualify them for new jobs in demand occupations and thus avoid long-term unemployment."

Section 1271(a) of the code, effective September 22, 1987, provides:

> "Notwithstanding any other provision of this division, any unemployed individual receiving benefits payable under this part, Part 3 (commencing with Section 3501), or Part 4 (commencing with Section 4001), or any other federal unemployment compensation law, who, no later than the 16th week of his or her receiving these benefits, applies for a determination of potential eligibility for benefits under this article and is determined eligible for benefits under this article, is eligible for a maximum of 52 times his or her weekly benefit amount under the provisions of this division. The department shall notify every individual who applies for unemployment compensation in this state of his or her opportunity to receive benefits under this article and to receive extended benefits under this article if application is made pursuant to this section."

The Appeals Board held in Precedent Decision P-B-5 that estoppels are not favored in the law and the doctrine is applicable only where it is established by clear and substantial evidence that equity between the parties demands that one of the parties be estopped to deny previous declarations of conduct upon which another party has relied and acted in good faith to the latter's detriment.

In DeYoung v. San Diego (1983), 147 Cal.App.3d 11, 17, 194 Cal.Rptr. 722, the court discussed the fundamental rules of statutory construction. Included in that discussion were the following important rules:

1. Ascertain the intent of the legislature so as to effectuate the purpose of the law.

2. Give a provision a reasonable and common sense interpretation consistent with the apparent purpose, which will result in wise policy rather than mischief or absurdity.

The CTB program was created to assist people that are unemployed and, as a practical matter, unemployable. Generally, a person meeting certain eligibility criteria can receive training while receiving unemployment insurance benefits. While in training under the CTB program, an individual would continue to receive his or her benefits, and be exempt from such Unemployment Insurance Code provisions as being available for work and having to search for work (see section 1267 of the code). Section 1271(a) of the code further provides that a recipient may receive up to 52 times his weekly benefit amount if he applies for training or retraining benefits no later than the sixteenth week of his or her receiving these benefits. Thus, if an individual qualifies for CTB and is reasonably diligent by applying within sixteen weeks of his or her receipt of benefits, he or she may receive benefits well beyond the 26-week period ordinarily allotted for an unemployment insurance recipient.

We believe the issue raised by this case is straightforward; that is, how should the sixteen-week period within which an individual must apply for TE be computed.

The administrative law judge, in finding good cause for the claimant's delay in this case, would in effect find that a sixteen-week period starts with each new or reopened claim. The administrative law judge would have found that the claimant had until the week ending March 11, 1989 within which to file her TE claim.

The Department would begin counting the sixteen weeks from the claim date, including the waiting week, and continue for the next fifteen weeks without regard to whether the claimant is receiving benefits. The deadline, as determined by the department, would have been the week ending September 17, 1988.

We do not agree with either position.

In interpreting the statute, we follow the fundamental rule as cited in the DeYoung case above, that a statutory provision should be given a reasonable and common sense interpretation. We do not believe the legislature envisioned extending benefits to the extent proposed by the administrative law judge. Clearly, given the legislative evolution of section 1271, we think that the legislature intended to place a reasonable limitation upon a recipient's right to file for TE. Before it was amended in September 1987, section 1271(a) of the code provided in part:

> "The Department shall notify every individual who applies for unemployment compensation in this state of his or her opportunity to receive benefits under this article and to receive extended benefits under this article if application is made by the 16th week of unemployment."

The statute formerly indicated that TE must be applied for by the sixteenth week of unemployment. By strictly construing that statute, as the Department did for a period of time, individuals who, for one reason or another, did not apply for unemployment insurance by the sixteenth week after they were separated from employment, lost their opportunity to apply for TE before they may have ever known about the program. This interpretation of the statute also rendered meaningless provisions in the code requiring the Department to inform claimants of the existence of TE. To remedy these obvious inequities, the Legislature amended the statute. However, in so doing, we do not believe it can reasonably be inferred that the Legislature intended to create a new sixteen-week period with every reopened claim.

Secondly, there is no "good cause" provision in the statute at issue. In our opinion, had the legislature intended that consideration be given to a claimant for inability to comply with the sixteen-week deadline, it would have included such language within the statute. In the absence of such language, we cannot presume that such a standard should exist.

Furthermore, we cannot find the Department should be estopped to deny this claim for TE. The claimant was verbally advised of the CTB program and was given a pamphlet explaining TE benefits to her. Even if we believed the instructions in the brochure were so misleading as to cause a recipient to to delay her claim, and we do not, the claimant never read

the brochure and otherwise failed to take any initiative to discover what benefits and training might be available to her. There is insufficient evidence justifying the application of the extraordinary remedy of estoppel in this case.

We believe the language of the statute is clear. The claimant must apply for TE "no later than the sixteenth week of his or her receiving these benefits" (emphasis added). A recipient would not "receive" benefits during his waiting week. A recipient would not "receive" benefits where he or she was employed and ineligible for benefits. The purpose of the statute is set forth in section 1266. In our opinion, following the Department's position regarding the counting of the sixteen-week period, while administratively convenient, would unreasonably restrict benefits, frustrating the stated purpose of the statute. The purpose of the statute is to retrain people so as to avoid long-term unemployment. An individual who goes back to work after a short period of time might not think he needs retraining as he is employed. Yet by counting the weeks consecutively, as urged by the Department, the period during which he must apply for TE would be truncated and perhaps lost entirely. That individual is prevented from receiving benefits which, in our opinion, were intended for him or her. On the other hand, an individual who receives benefits for sixteen weeks and has been properly notified of the TE program, should have applied for TE by the expiration of that period. We conclude, then, that the sixteen-week period includes only those weeks during which the claimant is actually receiving benefits.

In the instant case, the first week for which the claimant received benefits was the week ending June 18, 1988. She received benefits for thirteen consecutive weeks through the week ending September 10, 1988. The fourteenth week of her receipt of benefits was the week ending November 5, 1988. The claimant reopened her claim effective November 20, 1988. She received benefits continuously until the date of the hearing. The weeks ending November 26 and December 3, 1988 were the fifteenth and sixteenth weeks of her receiving benefits. As the claimant did not file her application for TE until February 22, 1989, she is not eligible for extended benefits under section 1271(a) of the code.

DECISION

The decision of the administrative law judge is reversed. The claimant is ineligible for benefits under section 1271 of the code.

Sacramento, California, October 3, 1989.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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